

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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In re:

LEONOR M. DE LOS SANTOS,

Debtor.

Bankruptcy Case No. 14-10902 MKN

LEONOR M. DE LOS SANTOS,

Plaintiff(s),

Case No. 2:14-CV-1522 JCM

v.

NATIONSTAR, LLC, et al.,

Defendant(s).

ORDER

LEONOR M. DE LOS SANTOS,

Appellant(s),

v.

CAM I TRUST/HMC ASSETS, LLC, et al.,

Appellee(s).

Presently before the court is an appeal from a bankruptcy order (docs. ## 1,4) dismissing certain parties from the adversary proceeding *De Los Santos v. Nationstar, LLC, et. al*, bankruptcy adversary proceeding number 14-01091-MKN. Appellant Leonor De Los Santos' (hereinafter "appellant") filed an opening brief. (Doc. # 10). Appellees Cam I Trust ("CAM") and HMC Assets, LLC ("HMC") (collectively "appellees") filed an answering brief in opposition. (Doc. # 12).

1 Instead of filing a timely reply brief, appellant filed an objection (doc. # 21) to this court's order  
 2 (doc. # 20) denying a motion to extend time to file a reply brief. (Doc. # 18).

### 3 **I. Background**

4 The appeal is from a bankruptcy court order dismissing appellees from an adversary  
 5 proceeding based on the principle of *res judicata*. (Doc. # 12 at 7). Despite a final judgment to the  
 6 contrary, appellant Leonor De Los Santos claims that CAM and HMC lack standing to foreclose  
 7 on a mortgage loan secured by her investment property located at 7318 Dolphine Crest Avenue,  
 8 Las Vegas, Nevada ("subject property"). (*Id.*).

9 In 2012, CAM commenced an action in the Eighth Judicial District Court, Clark County,  
 10 Nevada, case no. A-12-656582, in order to foreclose on the subject property. (Doc. # 12 at 7). On  
 11 April 3, 2013, based on CAM's motion for summary judgment, the court entered findings of fact  
 12 and conclusions of law that CAM was the holder of a promissory note signed by appellant and the  
 13 beneficiary of the deed of trust encumbering the subject property. (*Id.*). On that same date, the  
 14 court entered final judgment permitting CAM to proceed with foreclosure to satisfy outstanding  
 15 obligations appellant owed on the mortgage loan.<sup>1</sup> (*Id.* at 8).

16 The instant appeal stems from appellant's fifth chapter 13 bankruptcy case, commenced on  
 17 February 13, 2014. (*Id.*). Appellant retained counsel and filed a motion under 11 U.S.C. §  
 18 362(c)(4)(B) to impose an automatic stay. (*Id.*). CAM, through HMC, opposed the motion. (*Id.* at  
 19 9). The bankruptcy judge denied the motion without prejudice. (*Id.*).

20 On May 23, 2014, appellant, proceeding *pro se*, purported to initiate an adversary  
 21 proceeding. (*Id.*). Appellant filed a motion for preliminary injunction and recorded a lis pendens  
 22 on the subject property, but never filed an adversary complaint. (*Id.*). Appellant sought to stop  
 23 CAM's May 28, 2014, sheriff's sale because she did not believe CAM or HMC had standing to  
 24 foreclose. (*Id.*). However, appellant failed to set the application for hearing and no notice of  
 25 hearing was filed. (*Id.*). Without an automatic stay or temporary restraining order/preliminary  
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27  
 28 <sup>1</sup> The court's judgment also expunged a fraudulent reconveyance of the foreclosing deed  
 of trust appellant executed and recorded against the subject property.

1 injunction in effect, CAM proceeded with the scheduled sheriff's sale on May 28, 2014, and  
2 acquired the subject property through credit bid. (*Id.*).

3 On July 28, 2014, CAM and HMC filed a motion to dismiss the adversary case and to  
4 expunge lis pendens. (*Id.*). The motion argued that: (1) the adversary case had to be dismissed  
5 since De Los Santos never filed a complaint; (2) the requested injunctive relief was moot since the  
6 sheriff's sale had occurred and De Los Santos was surrendering the subject property in her chapter  
7 13 plan to CAM; (3) *res judicata* and issue preclusion barred any foreclosure standing issues; and  
8 (4) the lis pendens should be expunged because no legitimate legal grounds existed for its  
9 recordation. (*Id.*). The bankruptcy trustee was not served with the motion, since it was not a party  
10 to the case and because De Los Santos' amended chapter 13 plan on file proposed surrender of the  
11 subject property to CAM. (*Id.*).

12 De Los Santos' opposition to the motion argued that it was insufficient and not properly  
13 before the bankruptcy court because: (1) CAM and HMC did not admit or deny that the proceeding  
14 was core or non-core; (2) CAM and HMC did not file a disclosure statement pursuant to Federal  
15 Rule of Bankruptcy Procedure 7007.1; (3) a formal adversary complaint was filed by her son; and  
16 (4) CAM and HMC should be required to prove their standing again. (*Id.* at 10).

17 On September 3, 2014, the bankruptcy court entered its order granting CAM and HMC's  
18 motion to dismiss the adversary case and expunging the lis pendens. (*Id.*). Because De Los Santos  
19 had filed no adversary complaint, the court construed the application for preliminary injunction as  
20 a pleading or complaint. (*Id.*). Applying the standard for Federal Rule of Civil Procedure 12(b)(6),  
21 the court found De Los Santos failed to state a claim for which relief could be granted and  
22 dismissed her "complaint." (*Id.*). The court re-emphasized that CAM and HMC's foreclosure on  
23 the subject property was properly completed, since no stay had been in place. (*Id.*).

24 The bankruptcy court held that De Los Santos' foreclosure standing claims and allegations  
25 were barred by *res judicata* because the claims had been adjudicated in the state court action and  
26 judgment. (*Id.* at 10-11). The court also noted in a footnote that an admission or denial as to a core  
27 or non-core proceeding was not required since CAM and HMC's motion was not a pleading as  
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1 defined under Federal Rule of Civil Procedure 7(a), but rather a motion as defined by Federal Rule  
2 of Civil Procedure 7(b). (*Id.* at 11).

3 On September 17, 2014, De Los Santos filed the instant notice of appeal. (Doc. # 1). On  
4 December 9, 2014, the bankruptcy court dismissed the underlying bankruptcy case, *In re De Los*  
5 *Santos*, no. 14-10902-MKN, on motion from the bankruptcy trustee. (*Id.*; app'x CAM191-192).  
6 The bankruptcy court found that De Los Santos had failed to make plan payments. (*Id.*). Therefore,  
7 confirmation of her plan was denied. (*Id.*).

## 8 **II. Legal standards**

9 Under 28 U.S.C. § 158(a), a district court has jurisdiction to hear appeals “from final  
10 judgments, orders and decrees . . . of bankruptcy judges.” 28 U.S.C. § 158(a); *In re Rains*, 428  
11 F.3d 893, 900 (9th Cir. 2005). The district court reviews a bankruptcy court’s conclusions of law  
12 *de novo*. *In re Greene*, 583 F.3d 614, 618 (9th Cir. 2009).

13 The district court reviews the bankruptcy court’s findings of fact for clear error. *Id.* The  
14 court must accept the bankruptcy court’s findings of fact “unless, upon review, the court is left  
15 with the definite and firm conviction that a mistake has been committed by the bankruptcy judge.”  
16 *Id.* The bankruptcy court’s evidentiary rulings are reviewed for abuse of discretion. *In re Kim*, 130  
17 F.3d 863, 865 (9th Cir. 1997).

## 18 **III. Discussion**

19 On September 3, 2014, the bankruptcy court issued its order, and De Los Santos appealed  
20 on September 18, 2014. (Doc. # 1). In her opening brief (doc. # 10) she argues that: 1) the  
21 bankruptcy court lacked jurisdiction to enter a final order without her consent; 2) the final order  
22 was based on procedural issues, which a bankruptcy court may not rule on; 3) the final order was  
23 inequitable; 4) the trustee was improperly not included; and 5) Judge Nakagawa’s order remanding  
24 eviction case back to state court was improper.

### 25 *A. The Bankruptcy Appeal*

26 First, the court finds that the proceeding related to the foreclosure was a core proceeding  
27 under 28 U.S.C. 157(b)(2)(B). Appellant’s entire purpose for filing in the bankruptcy court was to  
28 retroactively stay the foreclosure action by initiating a Chapter 13 suit. By necessity then, appellant

1 considers the subject property part of the bankruptcy estate. It follows that the bankruptcy court's  
 2 adjudication of a motion for preliminary injunction protecting the subject property is a proceeding  
 3 for the "allowance or disallowance of claims against the estate." 28 U.S.C. 157(b)(2)(B). That  
 4 being the case, the court finds, upon *de novo* review, that the bankruptcy court had jurisdiction to  
 5 enter a final order on the core proceeding under 28 U.S.C. 57(b)(1).

6 Second, the court finds that the bankruptcy court did not exceed its jurisdiction with respect  
 7 to any procedural rules. It is not entirely clear from appellant's opening brief (doc. # 10) exactly  
 8 which part of Judge Nakagawa's order she objects to on procedural grounds. Nevertheless,  
 9 reviewing the record *de novo*, the court finds that the bankruptcy court did not improperly rule on  
 10 procedural grounds. Because appellees' motion to dismiss was a motion and not a pleading, they  
 11 were not required to make a statement as to whether the proceeding was core or non-core. The  
 12 appellant purported to initiate a core proceeding under 28 U.S.C. 157(b)(1), and the bankruptcy  
 13 court had jurisdiction to enter a final order on any timely and lawful motions filed therein.

14 Third, appellant argues that the result the court reached was inequitable. This court  
 15 disagrees. De Los Santos' action in Nevada state court was fully adjudicated with a valid and final  
 16 order. The bankruptcy court was correct in finding that it did not have jurisdiction to adjudicate  
 17 what was essentially an appeal of a state court order.

18 In fact, dismissal of the adversary proceeding against CAM was *necessary* because the  
 19 bankruptcy court lacked subject matter jurisdiction over what was, in reality, a thinly-veiled  
 20 attempt to appeal a final state court order to a federal court.

21 Furthermore, principles of *res judicata* bar consideration of her claim. *Res judicata* applies  
 22 when "the earlier suit . . . (1) involved the same claim or cause of action as the later suit, (2) reached  
 23 a final judgment on the merits, and (3) involved identical parties or privies." *Sidhu v. Flecto Co.*,  
 24 279 F.3d 896, 900 (9th Cir. 2002). Claim preclusion "bars litigation in a subsequent action of any  
 25 claims that . . . could have been raised in the prior action." *Owens v. Kaiser Foundation Health*  
 26 *Plan, Inc.*, 244 F.3d 708, 714 (9th Cir. 2001). A federal court may take judicial notice of a state  
 27 court decision and the filings therein to determine if *res judicata* applies. *See Manufactured Cmtys.*  
 28 *Inc. v. City of San Jose*, 420 F.3d 1022, 1033 (9th Cir. 2005).

1           The bankruptcy court properly considered the record of the state court proceeding, and  
2           determined that its consideration of appellant's standing arguments was barred under *res judicata*.  
3           Plaintiff's application asked the bankruptcy court to determine that CAM did not have standing to  
4           foreclose. Under Nevada law, standing is, of course, an element that a foreclosing creditor must  
5           prove in order to obtain final judgment in a foreclosure action. *See Edelstein v. Bank of New York*  
6           *Mellon*, 286 P.3d 249 (Nev. 2012).

7           The bankruptcy court found (1) that both the application and the state court action involved  
8           the same foreclosure action, (2) the state court reached summary judgment on the merits, and (3)  
9           De Los Santos and Cam I were both parties to the foreclosure action. *See Sidhu* at 900. Thus, claim  
10          preclusion applies. The bankruptcy court was correct to hold that it was barred from re-  
11          adjudicating the state court's final judgment.

12          Fourth, appellant argues that the court and defendants failed to include the trustee in the  
13          proceedings. Appellant states that the trustee was a necessary party. The court disagrees. The  
14          trustee may have had an interest in whether the subject property was part of the bankruptcy estate,  
15          but had no interest in the foreclosure action itself because it had no property interest in the subject  
16          property at the time of that action, nor was the property subject to any automatic stay.

17          Finally, appellant argues that the bankruptcy court should not have remanded the illegal  
18          detainer proceedings to state court. This issue was not addressed in the order under appeal here. In  
19          fact, De Los Santos filed a separate notice of appeal with respect to that order. The bankruptcy  
20          appellate panel affirmed that order in a separate appeal case. This court does not address the  
21          argument further.

22                C.       *Appellant's objection to this court's order denying her motion to extend time*

23          De Los Santos initiated the instant appeal on September 18, 2014. (Doc. # 1). The court set  
24          a briefing schedule on October 22, 2014. (Doc. # 6). De Los Santos' opening brief was due within  
25          fourteen days of the scheduling order. (Doc. # 6). On November 7, 2014, De Los Santos requested  
26          an extension of time until December 8, 2014, to file her opening brief. (Doc. # 8). The court granted  
27          appellant's extension. (Doc. # 9).  
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1 On December 22, 2014, appellee filed its answering brief. (Doc. # 12). Appellant thereafter  
 2 filed three motions to extend her time to file her reply brief. (Docs. ## 14, 16, 18). The court  
 3 granted appellant's first two motions and denied her third motion. (Docs. ## 15, 17, 20).  
 4 Appellant's reply brief was due on March 9, 2015. (Doc. # 17). Appellant failed to file a reply and  
 5 the deadline to do so passed.

6 Appellant objects to the court's denial of her third motion to extend time to file her reply  
 7 brief. (*Id.*). Appellant states that she believes this court "has acted inequitably and prejudicially  
 8 against [her]." (Doc. # 21 at 3).

9 The court has broad discretion in managing its docket. *See, e.g., Landis v. N. American*  
 10 *Co.*, 299 U.S. 248, 254 (1936) (Every court has inherent power to "control the disposition of the  
 11 causes on its docket with economy of time and effort for itself, for counsel, and for litigants."). In  
 12 exercising that discretion, the court is guided by the goals of securing the just, speedy, and  
 13 inexpensive resolution of actions. *See* Fed. R. Civ. P. 1. Federal courts have an inherent "traditional  
 14 power to manage their own affairs so as to achieve the orderly and expeditious disposition of  
 15 cases." *In re Lavender*, 180 F.3d 1114, 1118 (9th Cir. 1999) (citing *Chambers v. NASCO, Inc.*,  
 16 501 U.S. 32, 43 (1991)).

17 Here, the court granted appellant two extensions to file her reply brief, before denying  
 18 appellant's third motion to extend time to file her reply brief. Because of appellant's multiple  
 19 extensions, her reply brief was due on March 9, 2015, nearly three months beyond the initially  
 20 scheduled due date. (Doc. # 17). Based on the foregoing, the court does not find denial of her third  
 21 request for an extension to be inequitable or prejudicial.

#### 22 **IV. Conclusion**

23 Reviewing the record *de novo*, the court finds that the bankruptcy court's dismissal of  
 24 appellant's adversary proceeding with respect to CAM or HMC was proper.

25 Accordingly,

26 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the bankruptcy court's  
 27 order dismissing plaintiff/appellant Leonor M De Los Santos' claims against appellee CAM 1  
 28 Trust/HMC Assets, LLC be, and the same hereby is, AFFIRMED, consistent with the foregoing.

1 IT IS FURTHER ORDERED that plaintiff/appellant Leonor M De Los Santos' objection  
2 to this court's order (doc. # 21) be, and the same hereby is, DENIED.

3 DATED October 5, 2015.

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5 UNITED STATES DISTRICT JUDGE  
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